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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,004	07/29/2003	James M. Brugger	RC-0011-P22	8540
7590	07/27/2004		EXAMINER FITZGERALD, JOHN P	
GAMBRO INC INTELLECTUAL PROPERTY DEPARTMENT 10810 W COLLINS AVENUE Lakewood, CO 80215			ART UNIT	PAPER NUMBER
			2856	

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/630,004	Applicant(s) BRUGGER ET AL.	
	Examiner John P Fitzgerald	Art Unit 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3,7,15-17 and 22 is/are rejected.
- 7) ☒ Claim(s) 4-6,8-14,18-21 and 23-27 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>07/29/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Double Patenting

1. Claims 1, 2, 7 and 15, 16, 22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 3 and 15, 16, 17, respectively, of U.S. Patent No. 5,510,716. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following:

Independent claims 1 and 15 recite the same invention as claimed in patent claims 1 and 15, respectively, with only minor differences, specifically, in the employment of more broad and generic terminology, but referring to the same elements and method steps of the invention. Claims 1 and 15 employ broad and more generic terminology such as “parameter,” “physical property,” “vessel,” “first portion,” “second portion,” all in regards to a “fluid.” Patent claims 1 and 15 employ the corresponding terms “degree of recirculation,” “electrical conductivity,” “zone of a vessel,” “first fluid,” “second fluid,” all of which respectively match, the broader generic terms employed in the instant claims. An identical argument is made regarding the dependent claims.

2. Claims 1, 2 and 15, 16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7, 8 and 1, 2 respectively, of U.S. Patent No. 5,900,726. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following:

Independent claims 1 and 15 recite the same invention as claimed in patent claims 7 and 1, respectively, with only minor differences, specifically, in the employment of more broad and generic terminology, as well as identical element recitations, referring to the same elements and

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method steps of the invention. Claims 1 and 15 employ broad and more generic terminology such as "fluid flow parameter," "physical property," "vessel," "first portion," "second portion," all in regards to a "fluid." Patent claims 7 and 1 employ the corresponding terms "fluid flow parameter of blood" "physical property," "arterio-venous fistula," "first blood," "second blood," all of which respectively match, the broader generic or identical terms employed in the instant claims. An identical argument is made regarding the dependent claims.

Allowable Subject Matter

3. Claims 4-6, 8-14, 18-21 and 23-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Polaschegg et al. and Goux et al. teach certain aspects of the instant invention.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Fitzgerald whose telephone number is (571) 272-2843. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams, can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

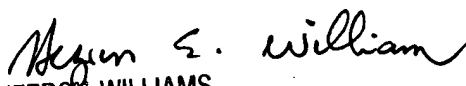
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Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JF

07/14/2004


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SUPERVISORY PATENT EXAMINER
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